S.B.CIVIL SECOND APPEAL NO.177/2002

The State of Rajasthan
vs.
Legal Representatives of Gaindmal and ors.

DATE OF JUDGMENT ::: 8.2.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. HR Soni, Dy.GA, for the appellant.
Mr. LK Purohit, for the respondents.

- - - - -

Heard learned counsel for the parties.

The plaintiffs/respondent filed suit against defendant/ appellant State challenging the action of the appellant State in demanding the conversion charges from the plaintiffs. The plaintiffs filed the suit with the allegation that the land in question is an abadi land, therefore, no conversion charges can be demanded. The appellant State stated that the land is recorded as agriculture land in the revenue record and, therefore, they were justified in demanding the conversion charges. The two courts below after considering the revenue entry for the land in question as recorded by the revenue authorities, held that the land is abadi land and is being used as such and, therefore, no conversion charges for the land in question from agriculture to abadi can be demanded.

Learned counsel for the appellant submitted that since the land in question is recorded as agriculture in the revenue record, therefore, only the revenue court has jurisdiction and the civil court has no jurisdiction. Next contention of the learned counsel for the appellant is that the land does not automatically stood converted because of change of land use and even if the agriculture land is used as abadi land, the land will remain agriculture and will not loose its character, therefore, according to learned counsel for the appellant, the trial court passed the decree wholly without jurisdiction. According to learned counsel for the appellant, the court below has committed serious error of law in holding that the plaintiffs are owners of the land in question.

Apart from what has been held by the two courts below, it appears that the State demanded the land conversion charges on the assumption that the revenue land has been converted and is used as abadi land by the plaintiffs. For this and if the land is agriculture land and has been converted or is being used as abadi land, the remedy lies in the relevant law i.e. Rajasthan Land Revenue Act and Rajasthan Tenancy Act under which the land can be resumed from the khatedar but under the Rajasthan Land Revenue (Conversion, Allotment and Regularisation of Agricultural land for Commercial and Residential Purposes in Urban Areas) Rules, 1981, the conversion charges can be demanded when one seeks conversion of agriculture land into abadi or for any other purpose. For this purpose, there is specific provision in the Rules of 1981 providing for permission to

change land use and also for regularisation of conversion.

In view of the above, it appears that the demand raised by the appellant State has no legal foundation in the facts of this case.

So far as jurisdiction of the civil court is concerned, in this case, the plaintiffs came with a positive assertion that the land in question is abadi land whereas the defendant State contested the contention by submitting that the land is agriculture. The jurisdiction initially is to be decided by the court on the basis of plaint allegations and not on the allegations made by the defendant in their written statement. In case, if the Court found that the suit is not triable by the civil court and is triable by the revenue court, the court may return the plaint. But in the present case, in view of the findings recorded by the courts below that the land is abadi land, only civil court had jurisdiction.

In view of the above, I do not find any substantial question of law involved in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya